

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

THE GEO GROUP, INC.¹

Employer

and

Case 4–RC–20962

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO, LOCAL 312

Petitioner

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

The Employer, The GEO Group, provides staffing for correctional facilities throughout the United States, through contracts with state and local governments. The Petitioner, Teamsters Local 312, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer’s nonprofessional employees at the George W. Hill Correctional Facility (the Prison) in Thornton, Pennsylvania.

The parties agree that 38 classifications of nonprofessional employees should be included in the bargaining unit, and 11 classifications should be excluded.² The sole issue in this case concerns the status of the Chaplain. The Employer contends that the Chaplain is a professional employee within the meaning of Section 2(12) of the Act and therefore should be excluded from the unit, while the Petitioner maintains that the Chaplain is not a professional employee.

¹ The Employer’s name appears as amended at the hearing.

² The parties agreed to include the Central Records Supervisor, Central Records Clerk, Bookkeepers, Inmate Accounts Clerk, Purchasing Coordinator, Inmate Mail Clerks, Switchboard Receptionist, Payroll Clerks, Jail Clerks, Assistant Food Services Managers, Production Specialists, Cook Supervisors, Maintenance Technicians, Laundry Supervisors, Laundry Technicians, Medical Secretaries, Medical Records Clerks, Medical Records Assistants, Licensed Practical Nurses, Dental Technicians, Clerks, Lead Counselors, Classification Counselors, Program Coordinator/Counselors, Educational Assessment Counselors, Librarians, Recreation Specialists, Inmate Records Supervisors, Inmate Records Clerks, Woodshop Supervisors, Security Clerks, Work Release Supervisors, Records Specialist, Medical Assistants, Booking Specialists, Executive Secretary to the Program Director, Criminal Justice Administrator, and MIS Manager.

The parties agreed to exclude the Executive Secretary to the Warden, Personnel Clerk, Correction Officers, Physicians, Psychiatrists, Physician Assistants, Nurse Practitioners, Registered Nurses, Dentists, Psychologists, and Guards.

A hearing officer of the Board held a hearing, and the Employer filed a brief with me. I have considered the evidence and the arguments presented by the parties and as discussed below, I have concluded that the Chaplain is a professional employee within the meaning of Section 2(12) of the Act. Accordingly, I have excluded her from the unit.

To provide a context for my discussion, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the Chaplain is a professional employee. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

The Employer is a nationwide company, headquartered in Florida, that has a contract with Delaware County, Pennsylvania to provide staff for the Prison. The Prison is a county jail with about 1,800 male and female inmates. Most of the inmates are housed in minimum-security facilities, but some are in maximum-security facilities as they await trial for serious offenses. There are about 380 guards and about 90 other employees employed at the Prison.

The Employer's Prison operations include the Administration Office, Security, Programs, Medical, and Food Service areas. The Administration Office includes accounting, purchasing, human resources, and the mail room. The Security department employs the prison guards. Thomas Savage, Assistant Warden of Programs, oversees the Prison's programs, which include counseling, the records department, work release, the archives, the law library, and the chaplaincy.

II. FACTORS RELEVANT TO DETERMINING THE PROFESSIONAL STATUS OF THE CHAPLAIN

The definition of a professional employee is set forth in Section 2(12) of the Act as follows:

The term 'professional employee' means-- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (i) has completed the courses of specialized

intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 2(12) was meant to apply to small and narrow classes of employees. *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12)(a) before they qualify as professional employees within the meaning of that subsection. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993). The Board determines professional status without regard to any criteria or decision by any other governmental entity. See e.g., *Standard Oil Co.*, 107 NLRB 1524, 1527 fn. 8 (1954) (Wage and Hour Act).

While employee background is examined in order to decide whether the work of the group fulfills the “knowledge of an advanced type” requirement of Section 2(12)(a)(iv), it is not the individual’s qualifications but the character of the work performed that determines professional status. *Avco Corp.*, 313 NLRB 1357 (1994); *Western Electric Co., Inc.*, 126 NLRB 1346, 1348-1349 (1960). An employer’s requirement that all of its employees in a classification have an advanced degree in the field to which their work is devoted would be “persuasive evidence” that the employees are professionals, but such evidence is not necessarily conclusive. *The Express-News Corp.*, above at 631. See also *Avco Corp.*, above. Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study in specialized education. *Aeronca, Inc.*, 221 NLRB 326, 327 (1975). Salary is not determinative of professional status. *E.W. Scripps Co.*, 94 NLRB 227, 240 (1951).

The Board has found social workers and other types of mental health employees who provide counseling services to be professional employees within the meaning of the Act. *Mount Airy Psychiatric Center*, 253 NLRB 1003, 1005 (1981) (social workers); *Mental Health Center of Boulder County, Inc.*, 222 NLRB 901, 902-903 (1976) (mental health clinicians, including social workers and mental health employees); *Child and Family Service of Springfield, Inc.*, 220 NLRB 37, 38-39 (1975) (social workers); *Catholic Charities of Buffalo, New York, Inc.*, 220 NLRB 9, 9-11 and fns. 10 and 12 (1975) (caseworkers). However, the Board did not find mental health employees to be Section 2(12) professionals where they lacked specialized academic degrees, specialized education at institutes of higher learning, and/or prior relevant work experience. *Rhode Island Hospital*, 313 NLRB 343 (parent consultants who counsel families with seriously ill children);³ *Community Health Services, Inc.*, 259 NLRB 362, 362-363 (1981) (mental health workers);⁴ *Samaritan Health Services, Inc.*, 238 NLRB 629, 640 (1978) (social work assistants); *Child and Family Service of Springfield, Inc.*, above at 39 (social work assistants and social work associates). The Board apparently has never decided whether a prison chaplain is a professional employee.⁵

³ In that case, the disputed employees were not required to have any formal education but were qualified for further positions based on their life experiences.

⁴ In that case, the employees did not provide psychological treatment to clients and were not required to have had any specialized education relevant to their work.

⁵ In *Catholic Charities of Buffalo, New York, Inc.*, above, 220 NLRB at 11 (1975), the Board excluded nuns and other religious employees from a unit because of insufficient community of interest with the

III. FACTS

Joanne Taylor, the Chaplain at the Prison, is responsible for spiritually guiding and providing religious representation for inmates. She is in charge of all religious activities at the Prison. Taylor earns \$14.08 per hour.

The Position Description for the Chaplain states that the employee “must have Clinical Pastoral Education or equivalent specialized training.” When she became the Chaplain in January 2003, Taylor had a substantial religious educational background. She was an ordained minister with the International Ministerial Fellowship of Jameson Evangelistic Association and had taken many classes in religious ministry and theology at various religious institutions of higher learning. She received a theology degree from the Deliverance Evangelistic Bible Institute in 1986, and in 1998 she received the first of several degrees from the Jameson School of Theology. From 1997 through the present, she has continued her studies at the Jameson School of Theology and the Jameson School of Ministry, taking Christian and pastoral counseling courses. She also received a Master of Arts degree in 2003 and a Doctor of Theology degree in 2004 from International Christian University. At present she is in a Ph.D program, taking classes outside of her working hours. Taylor is a member of the executive committee of the Pennsylvania Prison Chaplains Association, an organization that conducts educational programs for chaplains.

Taylor is a confidential counselor to the inmates. In her office space at the Prison, she counsels inmates on religious matters and attempts to assist them with their problems on a spiritual level. To receive counseling, an inmate may submit a requisition form or visit her at her office, pursuant to her “open door” policy. Taylor works at least eight hours each day Monday through Friday, plus overtime one to three times a week.

Taylor ensures that every inmate who makes her aware of his or her religious affiliation receives appropriate religious representation. To that end, she arranges for each interested inmate to have some contact with a minister or other representative from his or her religion, either through a scheduled religious service or a personal visit. She also conducts nondenominational religious services, where she delivers sermons.

petitioned-for nonreligious employees. The Board stated that the nuns “appeared to” be professional employees where their duties were similar to those of professional caseworkers, but because of its community-of-interest finding, the Board did not decide the issue.

The Employer cites several cases in its brief relating to chaplains’ professional status, but these cases are inapposite. In *South Coast Hospice, Inc.*, 333 NLRB 198 (2001), the parties stipulated that the chaplain was a professional employee, and no issue was presented as to the chaplain’s status. In *Florida Southern College*, 196 NLRB 888, 889-890 (1972), the chaplain was included in a professional unit with the college’s faculty, where he was a dual-function employee who taught one or two courses per semester. In *Drury College*, 244 NLRB 747 (1979), an unfair labor practice case, the Board did not determine the chaplain’s professional status other than to refer to a related representation case in which the chaplain had been included in a unit with other tenure track faculty members.

Taylor's other responsibilities include coordinating the Prison's Volunteer Ministries program and delivering religious mail to the inmates. In the Volunteer Ministries program, clergy members from the outside community conduct services at the Prison. Taylor fields calls from clergy who request to conduct services, gives them program applications, decides the schedule for the services, and communicates the schedule to the clergy.⁶ Taylor delivers religious mail once a day, sometimes with an inmate clerk or a guard. Upon delivery, Taylor asks the inmate to sign a receipt.⁷ For security reasons, she may not always be allowed to go onto a unit immediately, and she may need to wait to deliver the mail.

On her own initiative, Taylor started a religious library, cataloguing and numbering the Prison's religious books, and creating a sign-out sheet. She curtailed these efforts, however, because there was no appropriate place to keep the books and it was difficult for her to carry them.

Prison managers, including her immediate supervisor, Assistant Warden Savage, do not oversee Taylor's religious messages to inmates, such as her sermons. She does not report to anyone about her daily activities, but management approval is necessary for ordering Bibles and other materials. Taylor files a monthly report with the Prison, which she gives to a secretary of an Assistant Warden, although the record does not show what the report contains. Taylor approves donations, equipment, and materials for use in religious programs and maintains a close relationship with community religious resources. In order to create the master schedule for all of the Prison's programs, Assistant Warden Savage gathers all the information about religious services from Taylor.

IV. ANALYSIS

I find that the Chaplain is a professional employee within the meaning of Section 2(12) of the Act. Taylor's position requires a specialized education, she had a specialized education in religion from institutions of higher learning before the Employer hired her, and she continues to take high-level courses. Indeed, the Petitioner concedes that the Chaplain position satisfies the educational statutory requirement in Section 2(12)(iv). Taylor's work, especially the counseling of inmates and preparation for religious services, is primarily intellectual, varied in character, and consistently requires her to use her discretion and judgment. As a spiritual counselor and religious leader and educator, the nature of her work defies standardization of output in relation to a given time period. She has a great deal of independence in her work, scheduling and leading services, and counseling inmates, with little oversight. Compare *Samaritan Health Services, Inc.*, above, 238 NLRB at 640.⁸ Taylor's duties are substantially similar to those of social workers and other mental health employees that the Board has consistently found to be professional. Accordingly, I find that the Chaplain is a professional employee within the

⁶ The record is unclear about whether, and in what circumstances, Taylor denies clergy applicants permission to participate in the Volunteer Ministries program.

⁷ While Taylor testified that she could spend as much as five or six hours delivering mail a day, the record does not indicate how much time she ordinarily spends at this task. There was conflicting evidence about whether Taylor evaluates any of the mail before delivering it to the inmates.

⁸ In that case, the Board found social work assistants not to be professionals, noting that much of their activity was routine or closely supervised.

meaning of the Act, and I shall exclude her from the petitioned-for nonprofessional unit. *Mental Health Center of Boulder County, Inc.*, above, 222 NLRB at 902-903; *Catholic Charities of Buffalo, New York, Inc.*, above, 220 NLRB at 10.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Chaplain is a professional employee within the meaning of Section 2(12) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time Central Records Supervisor, Central Records Clerk, Bookkeepers, Inmate Accounts Clerk, Purchasing Coordinator, Inmate Mail Clerks, Switchboard Receptionist, Payroll Clerks, Jail Clerks, Assistant Food Services Managers, Production Specialists, Cook Supervisors, Maintenance Technicians, Laundry Supervisors, Laundry Technicians, Medical Secretaries, Medical Records Clerks, Medical Records Assistants, Licensed Practical Nurses, Dental Technicians, Clerks, Lead Counselors, Classification Counselors, Program Coordinator/Counselors, Educational Assessment Counselors, Librarians, Recreation Specialists, Inmate Records Supervisors, Inmate Records Clerks, Woodshop Supervisors, Security Clerks, Work Release Supervisors, Records Specialist, Medical Assistants, Booking Specialists, Executive Secretary to the Program Director, Criminal Justice Administrator, and MIS Manager, employed by the Employer at the George W. Hill Correctional Facility, 500 Chaney Road, Thornton, Pennsylvania, excluding all other employees, Chaplain, Executive Secretary to the Warden, Personnel Clerk, Correction Officers, Physicians, Psychiatrists, Physician Assistants,

Nurse Practitioners, Registered Nurses, Dentists, Psychologists, Guards, clerical employees and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **International Brotherhood of Teamsters, AFL-CIO, Local 312**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **February 23, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to Region4@NLRB.gov.⁹ Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **March 2, 2005**.

Signed: February 16, 2005

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

⁹ See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlr.gov.